

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON M. BECK and U.S. POSTAL SERVICE,  
POST OFFICE, Albuquerque, NM

*Docket No. 00-523; Submitted on the Record;  
Issued January 2, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

On November 26, 1997 appellant, then a 40-year-old clerk, filed a claim alleging that she had a nervous breakdown and tried to kill herself on October 27, 1997 due to "emotional stress from being in limbo by m[anagement]."

The record reveals that on October 27, 1997 several days after appellant had been advised that she could not transfer to the position she wanted and had been training for, appellant had a "mental breakdown" allegedly due to the "stress build-up." The record reveals that on November 3, 1997 appellant evidently took four Valium and then put a loaded gun in her purse, went to her physician's office, put the gun to her head, and attempted to commit suicide, but the physician grabbed the weapon before she could pull the trigger, and restrained appellant and she subsequently passed out, ostensibly from the drugs in her system. She was then hospitalized for psychiatric observation.<sup>1</sup>

Thereafter, on December 12, 1997 she was again hospitalized after she took a complete bottle of Trazadone (30 pills) and a complete bottle of Xanax (60 pills) while on the workroom floor. Due to the overdose while on the workroom floor, the employing establishment would not allow her to return to work.

By decision dated January 12, 1998, the Office of Workers' Compensation Programs rejected appellant's emotional condition claim finding that she had failed to implicate a compensable factor of her employment in its causation. The Office advised appellant that

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<sup>1</sup> Appellant had been previously hospitalized on November 1, 1997 due to suicidal ideation with intent of driving to the mountains with the hope of being bitten by a rattlesnake or falling off a cliff, but was unable to find a suitable place on October 27, 1997.

disappointment over not being given the job she wanted was not a compensable factor of employment and that, although the medical evidence of record stated that appellant developed her stress condition as a result of verbal, sexual and emotional harassment over a nine-year period, no specific incidents of any such alleged harassment were identified.

Thereafter appellant stated in several narratives that she started training on the graveyard shift (Tour 1) for one job on September 3, 1997 to make more money before Christmas, but that she also wanted a job closer to home for convenience. Appellant stated that such a job came up before she had completed the graveyard shift training and she put in for it, never expecting to get it, but that she did get it on October 12, 1997. Appellant did not know what to do with two jobs and she and her supervisor sought a training instructor's advice and were told that she had 10 days within which to decide if she wanted the job close to home, to pass all the tests on the graveyard position, complete that training and to start training on the job close to her home. Appellant claimed that she started training very hard, that she completed it in eight days, and that she was euphoric, but that on October 22, 1997 she was called at home and told that personnel had changed their mind and that the graveyard job was not hers. Appellant claimed that for the next few days she kept asking supervisors if they knew anything, that she could not take the stress and that on October 27, 1997 she had a breakdown. Appellant stated that, while hospitalized, she asked a physician why it happened and he allegedly said it was a build-up of years of stress and depression from her job.

Appellant told her physician that she felt stressed every time she would see one of "those" supervisors and that her state discriminated against "anglos." Appellant claimed that when she returned to work she was bothered by the noise, that, when she was reassigned to other work making labels, she finished it early and was then told to go home, and that she was very distraught because she received no pay when at home and she had bills to pay. Appellant claimed that she wanted to return to the graveyard shift and that she was assigned to the boxing section and fixing damaged mail. She claimed that she allowed the supervisors to toss her around like a rag doll and that none of them ever read her CA-17 on which her psychiatrist stated that she could not handle "unwarranted stress." Appellant claimed that, when they sent her home stating that they had no more work for her to do, it hit her like a ton of bricks. Appellant was upset that the employing establishment did not provide her light duty and stated that she could not take it anymore and that was why she downed two bottles of pills on the workroom floor. Appellant stated "I'd rather die than to work, breathe the same air, have contact with 'nonhumanistic' people."

With regard to the firearm incident appellant stated: "Due to the stress throughout the years and the excess stress which started on October 22, 1997 caused a final mental and emotional breakdown on October 27, 1997." She continued:

"Immediately thereafter I secluded myself from others and decided I'd rather die than to be subject to anymore abuse. I concentrated on planning my death. Unfortunately, I did not sustain any bodily injury. I was restrained before I could pull the trigger."

On January 8, 1998 appellant stated that she listened to what her supervisor told her, and did what the professionals told her to do, which was why she was so distraught when they

changed their minds. Appellant recounted her death preparation activities that she began on October 28, 1997 including gathering her will, her rosary beads, her cross, and her burial plot papers and choosing her casket at the funeral home and choosing the clothes in which she was to be buried. Appellant stated that she put her son's name on her bank account, talked to a priest in the mountains, took a lot of Xanax, tried to see her own priest and finally went to her doctor's office with her gun.

On March 26, 1998 appellant's representative articulated her claim, arguing that appellant trained and worked hard for many hours based upon erroneous information given her by her employer. The representative argued that one day before appellant was actually to start her new position, she was informed by the employing establishment that a mistake had been made and that in fact, she might not qualify for the job. He alleged that the employing establishment left her in limbo without telling her for certain whether she qualified or not, that the training instructor erroneously believed that appellant was entitled to continue training on the Tour 1 and allowed her to do so, but that later it was determined by human resources that, under the national agreement, appellant should not have been awarded the Tour 1 job as her deferment period for that job should have ended when she was designated senior bidder on a subsequent posting. Appellant's representative alleged that appellant was a victim of administrative error and abuse.

In a report dated July 23, 1998, Dr. Robert T. Kellogg, a Board-certified psychiatrist, diagnosed major depression and dysthymic disorder. He noted that appellant related her depression, which she had experienced off and on for a number of years, to "verbal, emotional and sexual abuse on her job as a postal worker." Dr. Kellogg noted that appellant's hopes were dashed when she was told that she could not transfer and would not be paid for her overtime training, even though another supervisor had previously told her that she could and would. He opined that appellant's current illness was caused by her being granted the job she sought, but then several days later having that decision reversed and he identified this as management error.

The employing establishment submitted E-mail evidence dated October 22, 1997 which stated:

"[Appellant] was qualifying on above job and did qualify on October 21, 1997, however, she bid on another job in our last posting before she qualified, which makes this bid null and void. Please refer to APWU Collective Bargaining Agreement, Page 84, section 3, F, 8, B, (2)."

Also submitted was a January 15, 1998 letter from the supervisor of distribution operations, Patricia Dimas, in response to an Equal Employment Opportunity (EEO) complaint filed by appellant regarding the same incident, which noted that the supervisor did not take anything away from appellant as she did not have that authority. It was explained that only human resources could award bids. Ms. Dimas recounted that appellant was awarded a Tour 1 bid assignment and had begun training on that assignment, but then bid on another job prior to completing of the first training and was designated as senior bidder on the subsequent posting. Ms. Dimas stated that Kathy Daniels of PEDC erroneously believed that appellant was entitled to continue training on the Tour 1 assignment and, therefore, they allowed her to do so. Ms. Dimas noted that Ms. Daniels believed that, if appellant qualified on the Tour 1 job prior to

the expiration of the 10-day period within which she was required to begin training on the subsequent bid, she would be awarded the Tour 1 job. She noted that, as appellant did complete the training prior to the expiration of the 10-day period, she issued appellant an assignment order (PS Form 1723) assigning her the job she desired effective October 24, 1997. Ms. Dimas noted, however, that after she received the above-noted e-mail, appellant called her and told her that the originator had telephoned appellant the night before at home with the information. Ms. Dimas explained that, so that appellant would not suffer due to "management error," appellant would be allowed to remain in the Tour 1 job and that, as of the time of the letter, she still held that position. Ms. Dimas noted that appellant had benefited from the Human Resources' error and that she had received more than that to which she was entitled under the bidding procedures outlined in the National Agreement.

By letter dated July 27, 1998, appellant, through her representative, alleged that over the course of her employment she had been subjected to incidents of emotional, mental, physical and sexual abuse, the most recent of which was the emotional and mental abuse involved with appellant being denied pay for training hours and having the Tour 1 job taken away from her after it had been granted. Appellant's representative argued that employing establishment error in the administrative matter, which had been acknowledged by the employing establishment, of allowing appellant to continue to train on Tour 1 after her subsequent bid had been accepted, but then taking the Tour 1 job away from her when their mistake was realized, constituted a compensable factor of employment.

By letter dated August 17, 1998, the employing establishment claimed that, in the January 15, 1998 letter, Ms. Dimas merely used the words "erroneously believed" in describing why the supervisor was confused and not in admitting agency error in its administrative action and noted that proper bidding procedures and the National Agreement were published and available for appellant's reference. It noted that appellant should have known that all training for new bid positions takes place without pay on an employee's own time and that she could not train for two positions at the same time. The employing establishment further noted that appellant knew that the position close to her home was a day shift position, rather than the night position status she sought for its pay differential and to be with her family during the day and it opined that no matter what the bidding outcome, it believed appellant would have been dissatisfied. It denied any error or abuse in the outcome of the administrative bidding process.

On August 20, 1998 the employing establishment human resources office commented on appellant's claim, noting that the human resources specialist did not "change [her] mind" in placing appellant. The specialist stated that she followed the rules of the contract regarding bidding activity and that appellant had been treated as any other employee would have been treated, but that, ultimately, appellant was actually given special consideration.

The employing establishment thereafter noted in an undated facsimile that appellant was allowed to complete the training for the first job and was paid for that training, that she was then allowed to have the second job due to her personal and family considerations, but that she did not show up for the training for the second job.

By decision dated December 14, 1998, the Office denied modification of the January 12, 1998 decision finding that the evidence submitted in support was insufficient to warrant

modification. The Office noted that disability resulting from the desire for a different position or a transfer is not a compensable factor of employment under the Federal Employees' Compensation Act.<sup>2</sup>

By letter dated July 6, 1999, appellant, through her representative, requested reconsideration and argued that administrative error caused appellant's emotional breakdown. Also submitted were duplicate copies of employing establishment letters and e-mail communications and an EEO affidavit regarding an unresolved claim.

By decision dated September 27, 1999, the Office denied modification of the December 14, 1998 decision finding that the evidence and argument submitted in support was insufficient to warrant modification. The Office found no evidence of administrative error or abuse.

The Board finds that appellant has failed to establish that she developed an emotional condition in the performance of duty, causally related to compensable factors of her federal employment.

To establish appellant's occupational disease claim that she has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.<sup>3</sup> Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.<sup>4</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Generally speaking, when an employee experiences an emotional reaction to his or her regular or specially assigned employment duties or to a requirement

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<sup>2</sup> The Board notes that the Office typographically omitted the word "not" from its finding regarding whether agency error had occurred, however, from the context of the paragraph the meaning is clear.

<sup>3</sup> See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>4</sup> *Id.*

imposed by her employment or has fear or anxiety regarding his or her ability to carry out assigned duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is regarded as due to an injury arising out of and in the course of the employment and comes within the coverage of the Act.<sup>5</sup> Conversely, if the employee's emotional reaction stems from employment matters which are not related to his or her regular or assigned work duties, the disability is not regarded as having arisen out of and in the course of employment and does not come within the coverage of the Act.<sup>6</sup> Noncompensable factors of employment include administrative and personnel actions, which are matters not considered to be "in the performance of duty."<sup>7</sup> Further, the Board has frequently explained that disability due to frustration or depression arising from not being able to work in a particular position or hold a particular position is not a compensable factor of employment.<sup>8</sup>

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>9</sup> When a claimant fails to implicate a compensable factor of employment, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.<sup>10</sup> When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.<sup>11</sup> If the evidence fails to establish that any compensable factor of employment is implicated in the development of the claimant's emotional condition, then the medical evidence of record need not be considered.

In the present case, the Office properly found that none of the causative factors appellant alleged were compensable factors of employment.

Appellant's allegations of employment factors that caused or contributed to her condition fall into the category of administrative or personnel actions. In *Thomas D. McEuen*,<sup>12</sup> the Board

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<sup>5</sup> *Donna Faye Cardwell*, *supra* note 3, *see also* *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>6</sup> *Id.*

<sup>7</sup> *See Joseph Dedonato*, 39 ECAB 1260 (1988); *Ralph O. Webster*, 38 ECAB 521 (1987).

<sup>8</sup> *Ruth C. Borden*, 43 ECAB 146 (1991); *Joan Juanita Greene*, 41 ECAB 760 (1990).

<sup>9</sup> *See Barbara Bush*, 38 ECAB 710 (1987).

<sup>10</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990).

<sup>11</sup> *See Gregory J. Meisenberg*, 44 ECAB 527 (1993).

<sup>12</sup> 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.<sup>13</sup> Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. The incidents and allegations made by appellant which fall into this category of administrative or personnel actions include the disallowance of appellant's bid for a Tour 1 position and the denial of pay for voluntary training performed on appellant's own time.

As the correct final administrative result was reached, there was no administrative error or abuse. The Board notes that there was no evidence presented of error or abuse in administrative discretion, as the result reached was dictated by regulations and contracts agreed to by all and available for all to consult.

Training undertaken voluntarily by appellant for a desired position under her misapprehension that she would be allowed to complete training for two separate bid positions consecutively and then have whichever position she chose, was not a requirement of her employment and mistaken approval of such training by her supervisor in the process does not amount to employing establishment error or abuse in the outcome.

Appellant has presented no evidence of administrative supervisory error or abuse in the performance of these actions and, therefore, they are not compensable now under the Act.

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<sup>13</sup> See *Richard J. Dube*, 42 ECAB 916 (1991).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 27, 1999 and December 14, 1998 are hereby affirmed.

Dated, Washington, DC  
January 2, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member